

86 Ill. Adm. Code 130.310(b) provides that food is “any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including food such as condiments, spices, seasonings, vitamins, bottled water and ice.” See 86 Ill. Adm. Code 130.310(b)(1). (This is a GIL).

June 4, 2002

Dear Xxxxx:

This letter is in response to your letter dated March 21, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department’s Website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

We are presently introducing a new line of products. We have enclosed a fact sheet with a list of content for your convenience. Therefore, we would greatly appreciate if you could render a ruling in writing as to whether our products would be taxable or not in your state.

Here is a list of the different products for which we would need a ruling:

- Herbal drops (Supplement)
- Protein bars (Supplement)
- Tablets (Supplement)
- NL Tablets (Supplement)

Thanking you in advance for your help and should you require any additional information regarding our line of products, please don't hesitate to contact the undersigned.

Please refer to 86 Ill. Adm. Code 130.310, “Food, Drugs, Medicines and Medical Appliances.” This regulation describes how sales of food can be subject to either low (1%) or high (6.25%) rates under the Retailers' Occupation Tax Act. Local sales taxes may also apply, depending upon where retail sales are made. The 1% low sales tax rate, plus applicable local taxes, is applied to food sold for human consumption to be consumed off the premises where sold, drugs, medicines and medical appliances. Food that is prepared for immediate consumption and items that do not qualify as drugs, medicines and medical appliances are taxed at the regular sales tax rate of 6.25%, plus applicable local taxes.

The Department regulation states that food is “any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including food such as condiments, spices, seasonings, vitamins, bottled water and ice.” See 86 Ill. Adm. Code 130.310(b)(1).

The nature of the premises where the food is sold is a factor in determining the applicable sales tax rate because taxation of food at the reduced rate depends on whether the food is prepared for immediate consumption or for consumption off premises where sold. All sales by retail establishments that provide facilities for on-premises consumption of food are subject to the high rate of tax unless the establishments utilize separate means of collection and physically partition the areas in which food not for immediate consumption is sold. See 86 Ill. Adm. Code 130.310(b)(2)(A).

If businesses do not provide facilities for on-site consumption, they must charge the high rate on all food sales if a majority (over 50%) of their gross receipts from food sales is for items sold in a state of preparation for immediate consumption (prepared by the retailer so as to be eaten without substantial delay after the final act of preparation). If a majority of their gross receipts from food sales is for items sold in bulk, they would charge the low rate on all food sales except for hot foods, foods prepared by the retailer for immediate consumption, soft drinks and alcoholic beverages, as these latter items are always subject to the full rate of tax.

In general, nutritional supplements and vitamins are included within the definition of food and are taxed at the reduced 1% sales tax rate. The dietary supplements whose labels you appended to your letter would be considered food, as that term is defined under the regulation. Therefore, such products would qualify for the reduced rate, so long as they otherwise qualify after application of the criteria set out in this letter and in 86 Ill. Adm. Code 130.310.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.